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16259
RECORDATION NO. FILED 1423

March 30, 1989

MAR 30 1989 - 10 55 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

9-089A019

Dear Ms. Lee:

Please find enclosed a Lease of Railroad Equipment dated January 31, 1989, between the following parties:

Lessor: Helm Financial Corporation
One Embarcadero Center
San Francisco, CA 94111

Lessee: Northwestern Oklahoma Railroad Co.
125 East Lake Street
Bloomington, IL 60108

The equipment involved in this agreement is as follows:

Equipment: 18, 60' 100-ton Boxcars
NOKL 961133-961150

Please file this document as a primary agreement. The filing fee of \$13 is enclosed. Thank you.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosure

MAR 30 10 45 AM '89
MOTOR OPERATING UNIT

Completed Mary A Oster

16259

RECORDATION NO. _____ FILED 1423

MAR 30 1989 -10 55 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

BETWEEN

HELM FINANCIAL CORPORATION

AND

NORTHWESTERN OKLAHOMA RAILROAD COMPANY

LEASE OF RAILROAD EQUIPMENT

AGREEMENT made and entered into this 21 day of January, 1989 between HELM FINANCIAL CORPORATION (hereinafter called "Lessor") and NORTHWESTERN OKLAHOMA RAILROAD COMPANY, a corporation with a mailing address of 125 East Lake Street, Suite 100, Bloomingdale, Illinois 60108 (hereinafter called "Lessee").

R E C I T A L S

Lessee desires to lease from Lessor certain railroad cars hereinafter specifically designated, all upon rentals, terms and conditions set forth in this Railroad Car Lease Agreement (hereinafter referred to as the "Lease").

A G R E E M E N T

It is agreed:

1. Lease of Cars. Lessor agrees to lease to Lessee and Lessee agrees to and does hereby lease from Lessor, railroad cars of the number of units, model type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and by this reference made a part hereof as set forth in Schedules which may from time to time be added to this Lease and thereby made a part hereof. The Lease shall become effective as to any Car immediately upon placement in interchange service and shall continue on all Cars so delivered or Cars which are substituted for such Cars that are delivered until terminated by Lessor or Lessee by sixty (60) day written notice following the termination of this Lease which termination shall occur three (3) years after the delivery of the last Car. It is understood that the Cars will initially be assigned to the Union Pacific Railroad, who will then provide such Cars to the Mid-Michigan Railroad at White Consolidated Industries in Greenville, Michigan, pursuant to agreements with Lessor. Thereafter, assignments will be made at any time and from time to time by the Lessee as directed by the Lessor.

2. Rental. Lessee shall pay to Lessor an amount equal to all per diem and mileage payments which Lessee is entitled to receive from all the railroad companies by reason of the utilization of the Cars on such other railroad companies' lines as set out in the Interchange Rules and which actually have been collected by Lessee less the [REDACTED] fee, per month, or any part thereof, per Car retained by Lessee pursuant to Paragraph 4.

3. Payment. Lessee shall make payment of all sums due hereunder to Lessor at such places as Lessor may from time to time direct. Lessee shall furnish to Lessor a report of all per diem and mileage payments to which it has become entitled by the use of such Cars on the lines of other railroads as soon after each calendar month as possible and in any event with seventy (70) days

after the end of each calendar month. Payment of the amount of the rental due hereunder shall be made at the same time such reports are furnished.

4. Servicing and Fee. Lessee will exert its best efforts to collect and police all per diem and mileage payments due to Lessee from other railroad lines by reason of the utilization of the Cars on such other railroad lines but shall not be responsible in the event any such amounts are not collected. Lessee will diligently process all claims against other railroads who fail to pay promptly the proper per diem and mileage required to be paid to Lessee by reason of the Interchange Rules. Lessee will also assist Lessor in the preparation of any damage claims which Lessor may have because of any damages that may occur to the Cars during the term of the Lease. Lessor hereby agrees with Lessee that Lessee may deduct from the rental due to Lessor by reason of Paragraph 2 of this Lease an amount equal to [REDACTED] per month, per Car or any part thereof. A one-time initial fee of [REDACTED] will be paid to Lessee by lessor to cover initial filing and accounting start-up costs within fifteen (15) days after the execution of this Lease. Such deductions shall be shown upon the report due from Lessee to Lessor as required in Paragraph 3 of this Lease. To facilitate the above, Lessee will place their reporting marks on the Cars at Lessor's expense. Cars under the Lease that are placed in storage from time to time shall be the responsibility of Lessor and all transportation and storage costs shall be paid by Lessor to Lessee.

5. Repairs. Lessee shall promptly notify Lessor when any Car requires heavy repair and all such repair costs shall be the responsibility of Lessor. At Lessor's direction Lessee will arrange for such repairs and, if Lessor fails to give Lessee direction to have the Car repaired, this Lease shall thereby be terminated as to that Car. Repair costs arising from Interchange Rules will be the responsibility of Lessor. All billings for all repairs will be paid by Lessee and deducted from amounts payable to Lessor pursuant to this Lease and in the event such amounts are insufficient Lessor will pay to Lessee on receipt of notice the amount of such deficiency.

6. Substitution or Termination of Cars. Lessor may, at any time and from time to time, replace any Car and substitute therefor a replacement Car which shall thereafter be treated in the same manner as if the replacement Car had been the Car originally furnished. Lessor may, at any time and from time to time terminate this Lease as to any Car covered herein. Lessor shall pay all costs of placing and/or removing Cars to and from assignments during the term of this Lease.

7. Taxes. Lessor will be liable for all Federal, State or other governmental taxes imposed or duties assessed or levied against the Cars.

8. Assignment and Subletting. Lessee shall not have the right to assign, sublease or loan the Cars, except in accordance with the direction of Lessor.

9. Liens. Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee, other than those which arise out of repairs performed under Interchange Rules, which may be a cloud upon or otherwise affect Lessor's title, including, but not limited to, liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease and Lessee shall promptly discharge any such lien, encumbrances or legal process.

10. Indemnity. Lessor agrees to indemnify Lessee and hold it harmless from any loss, expense or liability which Lessee may suffer or incur from any charge, claim, proceeding or other event which in any manner or from any other cause arising in connection with the use, possession or operation of a Car while subject to this Lease excepting Lessee's responsibility as outlined by the Interchange Rules while Lessor's Car is on Lessee's right-of-way or upon specific agreement herein contained. Lessor will carry liability insurance in the amount of \$2,000,000 and show Lessee as a named insured with regards to this Lease.

11. Assignment Change. Lessor will have the right upon ten (10) days' written notice to change assignments with respect to any Car covered by the Lease and Lessor shall pay all costs of such changes.

12. Redelivery. Upon expiration of this Lease with respect to any Car, or as to all the Cars, Lessee will exert its best efforts to obtain a Car Service Rule Five movement and surrender possession by delivering Car or Cars to a designated point as directed by Lessor. All costs of such redelivery shall be the responsibility of Lessor.

13. Default. If Lessee shall fail to make any payment required under this Lease within twenty (20) days after same shall have become due or shall default or fail for a period of twenty (20) days in the due observance or performance of any covenant, condition or agreement, required to be observed or performed on its part under this Lease, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events Lessor may at its election terminate this Lease by written notice to such effect and retake the Cars and thereafter recover as any exclusive remedy liquidated damages of \$10,000 for

loss of a bargain and not as a penalty in addition to all rental unpaid as of said date.

14. Sublease and Assignment. All rights of either party under this Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with the consent of the other party. In the event Lessor refuses to grant its consent to a request by Lessee to an assignment or transfer of Lessee's rights, Lessee shall have the right to terminate this Lease on sixty (60) days' notice. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to the terms and conditions of any lease, chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by Lessor and provided only that, so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. In the event that Lessee receives notice that Lessor has assigned its rights under this Lease with respect to Cars subject to a particular Schedule, Lessee shall, if requested in writing by Lessor or such assignee, make separate payment of rentals and other sums due with respect to such Cars to such place and person as Lessor or such assignee shall from time to time designate. The making of an assignment or sublease by Lessee or an assignment by Lessor shall not serve to relieve such party of any liability or undertaking under this Lease nor to impose any liability or undertaking under this Lease upon any such assignee or sublease except as otherwise provided herein or unless expressly assumed in writing by such sublease or assignee.

15. Opinion of Counsel. Upon the request of Lessor or its assignee, Lessee will deliver to Lessor an opinion of counsel for Lessee, addressed to Lessor or its assignee' in form and substance satisfactory to counsel for Lessor or its assignee, which opinion shall be to the effect that:

a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligations of Lessee, enforceable in accordance with its terms;

c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

d) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

16. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Helm Financial Corporation
One Embarcadero Center, Suite 3500
San Francisco, CA 94111
ATTN: President

or at such other addresses as Lessor may from time to time designate by such notice in writing and to Lessee at the address first above written or any such other address as Lessee may from time to time designate by notice in writing.

17. Governing Law; Writing. The terms of this Lease and all rights and obligations under this Lease shall be governed by the laws of the State of California. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

18. Counterparts. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidence by any such signed counterparts.

19. Severability; Waiver. If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of Lessor to exercise any rights under this Lease shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

20. Terminology. In constructing any language contained in this Lease, no references shall be made and no significance give to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

21. Definition. For all purposes of this Lease "Interchange Rules" shall have the following meaning:

"Interchange Rules"--all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes rules, interpretations, laws or orders.

22. Benefit. Except as otherwise provided in this Lease, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefits of the parties and (to the extent permitted) their successors and assigns.

23. Recording. Upon request by Lessor, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under Section 20c of the Interstate Commerce Act or such other recordation as Lessor deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Railroad Car Lease Agreement as of the day and year first above written.

HELM FINANCIAL CORPORATION

By: 

Title Executive Vice President

Date: 2/8/89

NORTHWESTERN OKLAHOMA RAILROAD CO.

By: 

Title Exec. Vice President

Date: 1/31/89

Equipment Description

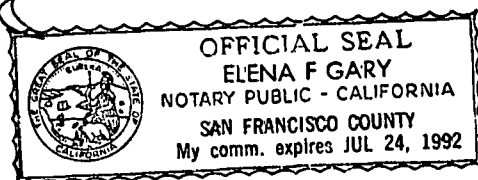
<u>Number of Cars</u>	<u>Description</u>	<u>AAR Designated</u>	<u>Car Number(s)</u>
18	60', 100-Ton Raised Roof Boxcars	XP	NOKL 961133-961150

STATE OF CALIFORNIA)
) §
COUNTY OF SAN FRANCISCO)

On this 8th day of February, 1989, before me personally appeared David R. Eckles, to me personally known, who, being by me duly sworn, says that he is E.V.P. of HELM FINANCIAL CORPORATION, that said instrument was signed and sealed on behalf of said corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elena F. Gary
Notary Public

My Commission Expires: July 24, 1992



[Notarial Seal]

STATE OF Illinois)
COUNTY OF De Page) §

On this 31 day of January, 1989, before me personally appeared Daniel Dolan-Lalighan to me personally known, who, being by me duly sworn, says that he is Exec V.P. of Interail, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Geraldine De Bartolo
Notary Public

My Commission Expires: _____

[Notarial Seal]

